

MULTIMEDIA



UNIVERSITY

STUDENT ID NO

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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2016/2017

UDL3622 – LAND LAW II

(All Sections / Groups)

27 FEBRUARY 2017

Reading Time : 9.00 p.m. – 9:15 p.m.

(15 Minutes)

Answering Time: 9:15 p.m. – 12:15 p.m.

(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in the question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 5 pages with 5 Questions only.
3. This Question paper consists of 2 sections. Attempt **ONE** question only in **Section A** and all **THREE** questions in **Section B**. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are allowed to bring into the Examination Hall **CLEAN** and **ORIGINAL** copy of **National Land Code 1965 (Act 56 of 1965)**.

Students are not allowed to lend or borrow statute(s) during the Examination.

5. Please write all your answers in the Answer Booklet provided.

SECTION A (Answer one Question only)**QUESTION 1**

- (a) Mickey entered into a sale and purchase agreement with Yoyo to purchase a piece of land in Bukit Beruang ('the land'). Upon the execution of the agreement on 1 September 2016, Mickey paid to Yoyo a sum of RM20,000 being 10% deposit towards the purchase price of RM200,000.

Some of the material terms are as follows:

- I. the balance purchase price of RM180,000.00 was to be paid on or before 31 December 2016;
- II. the completion of the sale shall take place at the legal firm of the purchaser's solicitors, Messrs Yamakuci & Partners ('YP') since the vendor is unrepresented;
- III. both parties agreed to appoint YP as stakeholder; and
- IV. YP shall pay the balance purchase price to Yoyo upon the registration of the transfer in favour of Mickey at a later date.

As Mickey wished to take possession of the land immediately for the construction purpose, YP advised Mickey to deposit the balance purchase price of RM180,000 with YP citing that this will enable Yoyo to surrender possession earlier than the completion date. The instrument of transfer was presented for registration on 30 December 2016. Yoyo had thereafter continuously reminded YP to release the balance purchase price to him but was told by YP's staff to wait as the transfer was not registered yet.

In February 2017, Yoyo discovered the following facts:-

- (i) the solicitor of YP had disappeared and absconded with the money;
- (ii) the transfer was rejected on the ground that consent from the State Authority was not obtained; and
- (iii) a portion of the land was already acquired by the Government for development purpose.

Advise the parties on the cause of action available.

(15 marks)

- (b) "The National Land Code 1965 does not protect the rights and interest of a purchaser before registration". Examine to what extent the statement is true.

(10 marks)

(Total: 25 marks)

Continued...

OR

QUESTION 2

- (a) Mathan is the registered proprietor of a vacant house at Bukit Beruang, Melaka. In January 2014, when Salman, Mathan's cousin, came back from Bombay and was desperately looking for a house to rent, Mathan verbally agreed to lease his house to Salman. Salman agreed to stay for ten years, and confirmed that if he wishes to stay on, he would renew the agreement for another ten years. Salman also agreed to pay Mathan RM1,000 per month. Salman has also painted and furnished the house.

In October 2016, Mathan agreed to sell his house to Sonia. Upon becoming the current registered proprietor, Sonia gave Salman one month's notice to quit and deliver vacant possession. The notice expired in February 2017. To date, Salman has still not vacated the house. In fact, he does not intend to vacate it at all.

Identify the rights and liabilities of the parties involved.

(17 marks)

- (b) Briefly illustrate the pre-requisites to the creation of a statutory lien under the National Land Code 1965.

(8 marks)

(Total: 25 marks)

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SECTION B (Answer all THREE questions)**QUESTION 3**

Coco Lee, owned a bungalow lot in Jesselton Height, Penang ("the property") since 1996. As Coco Lee was working in New York, she empowered her younger twin sister, Cuco Lee, to manage the land, including to collect rentals and to pay all miscellaneous charges and expenses on the property. The original issue document of title to the property at all material times was in the safe custody of Coco Lee.

Cuco Lee faced financial difficulty in her own business in recent years and had decided to sell the property to rescue her business. Cuco Lee has managed to find a purchaser, Donald, who is willing to pay Cuco in cash provided the purchase price is less than 20% of the market value of the property.

Both parties have appointed their respective solicitors in the transaction. Cuco Lee had represented to her solicitor, Mr. Smarty, that her name was misspelt on the title and there was no identification number stated in the title. She had also misrepresented to Mr. Smarty that she had lost the original title due to flood. Mr. Smarty then prepared the relevant statutory declarations to assist Cuco Lee to apply for the replacement of title and to change the name.

Mr. Donald was represented by another solicitor, Mr. Johnson, who had performed his duties according to due diligence. The signature of the purported transferor was attested by Mr. Smarty. Mr. Donald has paid the full purchase price to Mr. Smarty, as per request, upon the presentation of the Borang 14A for registration on 27 December 2015. The property is now registered in the name of Donald.

In December 2016, Coco Lee returned to Penang for good. She discovered the fraud committed by Cuco Lee. After repeated confession by Cuco Lee, Coco Lee decided to forgive and to cover her sister's wrong. Coco Lee instructed her solicitor, Mr. Alfred, to file a case against Donald, to return the property to her, citing the ground that the title obtained by Donald is defeasible under section 340(2)(b) of the National Land Code 1965.

Donald is panicked and approaches you for advice. Advise Donald on his chance of retaining the ownership.

If Coco Lee only becomes aware of the fraud after the land is subsequently charged by Mr. Donald to Mickey Bank Berhad, what is the status of the charge?

(Total: 25 marks)

Continued...

QUESTION 4

Honda is the registered owner of a piece of land in Melaka, held under a Registry title. The land is subject to a restriction in interest in which it cannot be transferred, charged or leased without the consent of the State Authority.

In August 2016, Honda received a notice of demand from Toyota Bank Berhad claiming an outstanding sum of RM200,000 be paid for the loan facility granted to one Jaguar Industries Bhd. Honda discovered that a person named Hensem, has forged her signature and executed a charge document in favour of the bank to secure a loan facility granted to JIB. Honda claimed that she never executed any instruments or documents to deal with the land and hence, the charge created was invalid.

In order to avoid unnecessary pressure from Toyota Bank Berhad, Honda decided to sell the land at RM500,000 to Proton. One of the conditions of sale is that Proton shall pay the full purchase price within four (4) months from the date of Sale and Purchase Agreement and the title will be registered in his name thereafter.

Honda and Proton have separately sought your advice on the following matters:

- (a) In the Notice of Demand issued by Toyota Bank, Honda is required to remedy the breach within fourteen (14) days from the date of service of the notice. In the event Honda fails to respond to the notice as required, Toyota Bank will apply for an order for sale. Honda seeks your advice whether she can challenge the validity of the Notice of Demand issued by Toyota Bank. Advise Honda.
(10 marks)
- (b) With reference to the relevant statutory provisions and case laws, discuss the differences between Form 16D and 16E in the application for an Order for Sale.
(5 marks)
- (c) As to date, the negotiation between Honda and Proton has not been concluded. Proton was informed by a friend that Honda's land is now subject to an Order for Sale initiated by Toyota Bank Berhad. Proton plans to enter into the Sale and Purchase Agreement soonest possible but sceptical whether the land can be sold by way of a private treaty. Advise Proton.
(10 marks)

(Total: 25 marks)

Continued...

QUESTION 5

- (a) In 2010, Stanley had borrowed a housing loan from Ultraman Bank Berhad ("UBB") to finance the purchase of his matrimonial house ("the property"). Due to his defaults in the repayment, UBB had obtained an order for sale of the property. Cinderella was the successful bidder in the public auction. When she presented the Certificate of Sale to the land office for registration, she discovered the following:

- (i) that there is a private caveat entered by Mr. Shark Long on the land based on the ground that the previous owner has owed a large sum of gambling debt to Shark Long Sdn. Bhd.;
- (ii) that a private caveat was entered by UBB on 25 February 2010; and
- (iii) that a private caveat was entered by the Stanley recently on the property to defend his only house for the family from being sold by UBB.

Advise Cinderella on the procedures available and chances to remove such caveat(s).

(17 marks)

- (b) With reference to relevant authorities, distinguish the grounds available to enter a Registrar's caveat and a private caveat on the land.

(8 marks)

(Total: 25 marks)

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